



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[EPA-HQ-OAR-2009-0491; FRL-9919-91-OAR]

Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units

AGENCY: Environmental Protection Agency.

ACTION: Final rule; notice of data availability (NODA).

SUMMARY: Through this notice of data availability (NODA), the EPA is providing notice of allocations of emission allowances to certain units for compliance with the Cross-State Air Pollution Rule (CSAPR). Since its original promulgation, CSAPR has been amended in several subsequent rulemakings and its compliance deadlines have been tolled by three years pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court). These allowance allocations, which supersede the allocations announced in a 2011 NODA, reflect the changes to CSAPR made in those subsequent rulemakings as well as "re-vintaging" of previously recorded allowances so as to account for the impact of tolling of the rule's deadlines. The allocations apply only to units that commenced commercial operation before 2010 and only to the extent that states do not provide alternative allowance

allocations following procedures set out in the rule. A spreadsheet containing both the allowance allocations and the data upon which the allocations are based has been posted on the EPA's website.

DATES: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Michael Cohen, at (202) 343-9497 or cohen.michael@epa.gov; or Robert Miller, at (202) 343-9077 or miller.robertl@epa.gov. The mailing address for each of these individuals is U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Data for Which Notice Is Being Provided

Through this NODA, the EPA is providing notice of the availability of unit-specific default allocations of CSAPR allowances for electricity generating units (EGUs) that commenced commercial operation before 2010. The data are contained in an Excel spreadsheet titled "Unit Level Allocations Under the CSAPR FIPs After Tolling" that has been posted on the EPA's website at <http://www.epa.gov/crossstaterule/actions.html>. The spreadsheet contains default allocations of allowances under

each of the four CSAPR trading programs for individual EGUs for each compliance year from 2015 through 2020. The spreadsheet also contains the data used to compute the allocations and describes how the computations are performed. The EPA is not requesting comment on the allocations, underlying data, or computation methodology.

The EPA notes that an allocation or lack of allocation of emission allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU.¹ The EPA also notes that allocations are subject to potential correction under the rule.²

II. Description of the Allocations

CSAPR includes several emissions trading programs that require affected EGUs to hold emission allowances sufficient to cover their emissions of nitrogen oxides (NO_x) and/or sulfur dioxide (SO₂) in each compliance period. For each trading program and compliance period, the rule establishes overall state "budgets" representing the maximum number of emission allowances that may be allocated to the group of affected EGUs in each covered state. Beginning with CSAPR's second compliance year, each covered state generally has the option to determine how the

¹ See 40 CFR 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1).

² See 40 CFR 97.411(c), 97.511(c), 97.611(c), and 97.711(c).

allowances in its state budget for each program should be allocated among the state's EGUs.³ However, for CSAPR's first compliance year, and by default for subsequent compliance years in situations where a state has not provided the EPA with the state's own allocations pursuant to an approved SIP revision, the allocations are made by the EPA.

In the case of units commencing commercial operation on or after January 1, 2010, termed "new" units, the EPA's default allocations for each compliance year are annually determined during the compliance year based on current and prior year emission data, using a methodology set out in the regulatory text.⁴ In the case of units that commenced commercial operations before January 1, 2010, termed "existing" units, the EPA determined default allocations for all compliance years during the initial rulemaking based on 2006-2010 heat input data and 2003-2010 emissions data, according to a methodology finalized in the rulemaking but not included in the regulatory text.⁵ The regulatory text calls for default allocations to the existing units to be provided in a NODA.⁶ In July 2011, the EPA issued a

³ See 40 CFR 52.38 and 52.39.

⁴ See 40 CFR 97.412, 97.512, 97.612, and 97.712.

⁵ See 76 FR 48208, 48288-90 (August 8, 2011).

⁶ See 40 CFR 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1).

NODA reflecting the default allocations for existing units as determined in the original CSAPR rulemaking.⁷

In three rulemakings finalized after the original CSAPR rulemaking, the EPA created budgets for several states added to the rule's ozone-season NO_x trading program, increased some previously established state budgets, and changed the shares of some state budgets set aside for new units.⁸ In one of those rulemakings, the EPA also revised unit-specific allowance allocations in some states in order to account for emissions tonnage limitations established under certain consent decrees.⁹

As originally promulgated, compliance with CSAPR's trading programs was scheduled to begin on January 1, 2012. However, on December 30, 2011, the D.C. Circuit stayed the rule. On October 23, 2014, the Court granted the EPA's motion to lift the stay and toll the rule's compliance deadlines by three years,

⁷ 76 FR 42055 (July 18, 2011).

⁸ See 76 FR 48208 (August 8, 2011) (the original CSAPR final rule); 76 FR 80760 (December 27, 2011) (the "Supplemental Rule"); 77 FR 10324 (February 21, 2012) (the "First Revisions Rule"); 77 FR 34830 (June 12, 2012) (the "Second Revisions Rule").

⁹ The consent decree tonnage limitations had already been considered for purposes of setting the CSAPR state budgets but had not previously been accounted for in setting unit-specific allowance allocations in states with EGUs affected by those limitations. See 77 FR at 10329-30.

allowing the first compliance period to begin on January 1, 2015.¹⁰

The allowance allocations described in this NODA reflect all the budget, set-aside, and unit-specific allocation changes finalized in the rulemakings conducted after the original CSAPR rulemaking. The allocations also account for the impact of the tolling of the rule's compliance deadlines by re-vintaging previously recorded 2012 and 2013 allowances as 2015 and 2016 allowances, respectively.

III. Recordation of the Allocations

CSAPR specifies deadlines for the EPA to record allowance allocations for each compliance year.¹¹ In cases where those deadlines, as tolled by the Court's order, have not yet passed, and where states have not submitted alternative allowance allocations pursuant to approved SIP revisions, the EPA will

¹⁰ Order, Document #1518738, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. issued Oct. 23, 2014).

¹¹ See 40 CFR 97.421, 97.521, 97.621, and 97.721. With respect to recordation of allowance allocations for the additional state budgets established in the Supplemental Rule, CSAPR as amended includes separate, specific recordation deadlines. See 76 FR 80760 (December 27, 2011); 40 CFR 97.521(a) and (b). However, with respect to recordation of allocation changes resulting from the two Revisions Rules, see 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012), or re-vintaging of previously recorded allowances to account for tolling of the rule's compliance deadlines, CSAPR as amended does not include specific recordation deadlines.

record the allocations described in this NODA by the applicable recordation deadlines.

To meet recordation deadlines that occurred before CSAPR was stayed, the EPA has already recorded most allowances allocated for CSAPR's first compliance year (originally 2012 and now 2015), and some allowances allocated for CSAPR's second compliance year (originally 2013 and now 2016). In these cases, the EPA will re-vintage the previously recorded 2012 and 2013 allowances into 2015 and 2016 allowances, respectively, consistent with the Court's order tolling CSAPR's compliance deadlines. The EPA will then record adjustments as needed to bring the re-vintaged, previously recorded allocations up to the 2015 and 2016 allocations described in this NODA. Allowance tracking system accounts will be briefly frozen while the re-vintaging and adjustments are carried out.

List of Subjects

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 21, 2014.

Reid P. Harvey,
Director, Clean Air Markets Division.

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